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HISTORY
OF THE
Eastern Railroad Association

COMP' ED BY

JOHN J. HARROWER,
Secretary.

OCTOBER 25, 1905.



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OFFICERS.

Elected by Executive Committee, May 25, 1905.

PRESIDENT.

THEODORE N. ELY, PHILADELPHIA, PA.

VICE-PRESIDENT.

WILLIAM G. BESLER, NEW YORK, N. Y.

GENERAL COUNSEL.

ROBERT J. FISHER, WASHINGTON, D. C.

TREASURER.

ALBERT A. FOLSOM, BOSTON, MASS.

SECRETARY.

JOHN J. HARROWER, WASHINGTON, D. C.

AUDITOR.

JAMES H. FOULDS, JR., NEW YORK, N. Y.

GENERAL OFFICES.

614 F STREET, N.W., WASHINGTON, D. C.

MEMBERSHIP.

OCTOBER 25, 1905.

Alabama Great Southern Railroad Company.
Atlantic Coast Line Railroad Company.
Baltimore & Ohio Railroad Company.
Baltimore & Ohio South Western Railroad Company.
Boston & Maine Railroad Company.
Buffalo, Rochester & Pittsburgh Railway Company.
Central Railroad Company of New Jersey.
Chesapeake & Ohio Railway Company.
Cumberland Valley Railroad Company.
Delaware & Hudson Company.
Delaware, Lackawanna & Western Railroad Company.
Delaware, Susquehanna & Schuylkill Railroad Company.
Lehigh Valley Railroad Company.
Long Island Railroad Company.
Maine Central Railroad Company.
New York Central & Hudson River Railroad Company.
New York, New Haven & Hartford Railroad Company.
New York, Ontario & Western Railway Company.
Norfolk & Western Railway Company.
Northern Central Railway Company.
Pennsylvania Company.
Pennsylvania Railroad Company.
Philadelphia, Baltimore & Washington Railroad Company.
Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.
Richmond, Fredericksburg & Potomac Railroad Company.
Seaboard Air Line Railway Company.
Southern Railway Company.
Western Maryland Railroad Company.
West Jersey & Seashore Railroad Company.
West Virginia Central & Pittsburgh Railway Company.

EXECUTIVE COMMITTEE.

ELECTED AT 38TH ANNUAL MEETING, HELD MAY 25, 1905

THEODORE N. ELY,	.	Representing Pennsylvania R.R. Co.
HENRY F. KENNEY,	.	Representing Phila., Balt., & Wash. R.R. Co.
JOHN R. KENLY,	.	Representing Atlantic Coast Line R.R. Co.
JAMES J. TURNER,	.	Representing Pennsylvania Company.
WILLIAM G. BESLER,	.	Representing Central R.R. Co. of New Jersey.
JOHN F. DEEMS,	.	Representing N. Y. C. & H. R. R.R. Co.
FAIRFAX HARRISON,	.	Representing Southern Railway Co.
FAYETTE S. CURTIS,	.	Representing N. Y., N. H. & H. R.R. Co.
GEORGE L. POTTER,	.	Representing Baltimore & Ohio R.R. Co.

OFFICERS FROM DATE OF ORGANIZATION WITH PERIODS OF THEIR HOLDING OFFICE.

PRESIDENTS.

- ISAAC HINCKLEY (President Philadelphia, Wilmington & Baltimore R.R. Co.), May 8, 1867, to May 8, 1878. (Declined re-election.)
 STRICKLAND KNEASS (Assistant to President, Pennsylvania R.R. Co.), May 8, 1878, to January 14, 1884. (Died.)
 WILLIAM D. BISHOP (President New York, New Haven & Hartford R.R. Co.), February 14, 1884, to February 4, 1904. (Died.)
 THEODORE N. ELY (Chief of Motive Power, Pennsylvania R.R. Co.), May 11, 1904, to date.

VICE-PRESIDENTS.

- THEODORE N. ELY (Chief of Motive Power, Pennsylvania R.R. Co.), May 14, 1884, to May 11, 1904.
 WILLIAM G. BESLER (Vice-President and General Manager, Central R.R. Co. of New Jersey), May 11, 1904, to date.

GENERAL COUNSELS.

- ANDREW MCCALLUM (Secretary of the Association), May 12, 1880, to January 14, 1891. (Died.)
 ROBERT J. FISHER (Assistant Commissioner of Patents), March 1, 1891, to date.

SECRETARIES.

- DANIEL L. HARRIS (President, Connecticut River R.R. Co.), May 8, 1867, to October 1, 1878. (Resigned.)
 ANDREW MCCALLUM (Patent Lawyer), December 4, 1878, to May 11, 1887. (Elected General Counsel.)
 JOHN J. HARROWER (Assistant Secretary and employee of the Association from date of organization), elected Secretary May 11, 1887, to date.

TREASURERS.

JOHN B. WINSLOW (Superintendent, Boston & Lowell R.R. Co.), May 8, 1867, to March 12, 1879. (Resigned.)

ALBERT A. FOLSOM (Superintendent, Boston & Providence R.R. Co.), March 12, 1879, to date.

GENERAL AGENT.

STEPHEN M. WHIPPLE (Patent Expert), May 8, 1867, to March 12, 1879. (Resigned.)

EXECUTIVE COMMITTEE.
LIST OF MEMBERS SINCE DATE OF ORGANIZATION.
(CHRONOLOGICAL ORDER.)

Name.	Representing	Period of Membership.
Daniel L. Harris.....	Conn. River R.R. Co.....	Feb. 6, 1867, to Oct. 1, 1878.
Richard D. Rice	Portland & Kennebec R.R. Co	Feb. 6, 1867, to May 13, 1874.
John B. Winslow.....	Boston & Lowell R.R. Co.....	Feb. 6, 1867, to Mar. 12, 1879.
William D. Bishop	Naugatuck R.R. Co. and New York, New Haven & Hartford R.R. Co.....	Feb. 6, 1867, to Feb. 4, 1904.
A. S. Diven	Eric Railway Co.....	Feb. 6, 1867, to Mar. 8, 1870.
Azariah Boody	N. Y. C. & H. R. R.R. Co.....	Feb. 6, 1867, to Sept. 4, 1867.
Isaac Hinckley	Phil., Wil. & Balt. R.R. Co.....	Feb. 6, 1867, to May 8, 1878.
Edward H. Williams	Pennsylvania R.R. Co.....	Feb. 6, 1867, to Sept. 4, 1867.
J. L. Wilson	Baltimore & Ohio R.R. Co.....	(Elected Feb. 6, 1867. Mr. Wilson never acted, he being ineligible by reason of the fact that the B. & O. R.R. Co. was not then a member.)
Wm. J. Howard	Northern Cent. R.R. Co.....	Sept. 4, 1867, to May 8, 1878.

S. G. Fairchild.....	N. Y. C. & H. R. R.R. Co.....	Sept. 4, 1867, to May 31, 1871.
H. J. Lombaert	Pennsylvania R.R. Co.....	Sept. 4, 1867, to May 30, 1873.
R. E. Ricker.....	Central R.R. Co. of N. J.....	May 31, 1871, to May 9, 1877.
Jas. Tillinghast	N. Y. C. & H. R. R.R. Co.....	May 31, 1871, to May 30, 1873.
Edwin D. Worcester.....	N. Y. C. & H. R. R.R. Co.....	May 30, 1873, to Mar. 13, 1884.
Strickland Kneass.....	Pennsylvania R.R. Co.....	May 30, 1873, to May 12, 1875.
J. C. Clarke	Erie Railway Co.....	May 13, 1874, to Jan. 29, 1875.
E. S. Bowen.....	Erie Railway Co.....	Jan. 29, 1875, to May 9, 1877.
Frank Thomson.....	Pennsylvania R.R. Co.....	May 12, 1875, to Dec. 14, 1882.
A. A. Folsom	Boston & Prov. R.R. Co.....	May 9, 1877, to May 8, 1900.
James Moore	Central R.R. Co. of N. J.....	May 9, 1877, to Aug. 14, 1897.
Strickland Kneass.....	Pennsylvania R.R. Co.....	May 8, 1878, to Jan. 14, 1884.
J. N. DuBarry	Northern Central Railway Co.....	May 8, 1878, to Dec. 17, 1892.
J. D. Layng	Pennsylvania Company	Mar. 12, 1879, to Sept. 14, 1881.
J. L. Randolph	Baltimore & Ohio R.R. Co	Mar. 12, 1879, to Dec. 13, 1888.
Theodore N. Ely	Pennsylvania Company	Dec. 14, 1881 to May 14, 1902.
Chas. E. Pugh	Pennsylvania R.R. Co.....	Dec. 14, 1882 to May 14, 1902.

EXECUTIVE COMMITTEE.—CONTINUED.

Name.	Representing	Period of Membership.
John M. Toucey.....	N. Y. C. & H. R. R.R. Co.....	Mar. 13, 1884, to Sept. 24, 1898.
Henry F. Kenney	Phil., Wil. & Balt. R.R. Co.....	May 14, 1884, to date.
Orland Smith.....	Balt. & Ohio R.R. Co.....	May 8, 1889, to Mar. 13, 1890.
Geo. B. Hazlehurst	Balt. & Ohio R.R. Co.....	Mar. 13, 1890, to Apr. 2, 1896.
Robert Neilson	Northern Central Railway Co.....	Feb. 16, 1893, to Oct. 13, 1896.
Harvey Middleton.....	Balt. & Ohio R.R. Co.....	May 13, 1896, to Dec. 14, 1899.
Richard H. Soule	Norfolk & Western Ry. Co.....	Mar. 11, 1897, to Sept. 9, 1897.
S. M. Williams.....	Central R. R. Co. of N. J.....	Dec. 9, 1897, to Sept. 12, 1901
J. R. Kenly	Atlantic Coast Line R.R. Co.....	Dec. 9, 1897, to date.
Samuel E. Williamson.....	N. Y. C. & H. R. R.R. Co.....	Dec. 8, 1898, to Feb. 21, 1903.
Jacob N. Barr.....	Balt. & Ohio R.R. Co.....	Dec. 14, 1899, to Dec. 5, 1901.
Frank S. Cannon.....	Southern Railway Co	May 8, 1900, to Mar. 13, 1903.
C. H. Warren.....	Central R.R. Co. of N. J.....	Sept. 12, 1901, to May 14, 1902
F. D. Casanave.....	Balt. & Ohio R.R. Co.....	Dec. 5, 1901, to Mar. 10, 1904.

James J. Turner.....	Pennsylvania Company	May 14, 1902, to date
Theodore N. Ely	Pennsylvania R.R. Co.....	May 14, 1902, to date
William G. Besler	Central R.R. Co. of N. J.....	May 14, 1902, to date.
Fairfax Harrison	Southern Railway Co	Mar. 12, 1903, to date
John F. Deems	N. Y. C. & H. R. R.R. Co.....	Mar. 12, 1903, to date.
Fayette S. Curtis.....	N. Y., N. H. & H. R.R. Co.....	Mar. 10, 1904, to date
George L. Potter	Balt. & Ohio R. R. Co	Mar 10, 1904, to date.

RAILROAD COMPANIES WHICH ARE OR HAVE BEEN MEMBERS OF THE EASTERN RAILROAD
ASSOCIATION.

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Name of Railroad Company.	Became a member.	Present name or connection.
Alabama Great Southern.....	Mar. 12, 1900	Unchanged.
Albany & Susquehanna	Mar. 4, 1867	Delaware & Hudson.
Allegheny Valley.....	Dec. 10, 1879	Pennsylvania.
Androscoggin	Nov. 30, 1867	Maine Central.
Atlantic Coast Line (made up of several roads already mem- bers, together with others not heretofore members)	1890	Unchanged.
Baltimore & Ohio	April —, 1873	Unchanged.
Baltimore & Ohio Southwestern	Oct. 16, 1902	Unchanged.
Boston & Albany (by consolidation)	Dec. 28, 1870	N. Y. C. & H. R.
Boston & Lowell & Nashua & Lowell	Feb. 13, 1867	Boston & Maine.
Boston & Maine	Feb. 13, 1867	Unchanged.
Boston & Providence	Mar. 1, 1867	N. Y., N. H. & H.
Boston & Worcester	Feb. 14, 1867	N. Y. C. & H. R.
Boston, Barre & Gardner	June 1, 1881	Boston & Maine.

Boston, Clinton & Fitchburg	1867	N. Y., N. H. & H.
Boston, Concord & Montreal	May 16, 1867	Boston & Maine.
Boston, Hartford & Erie	Sept. 10, 1867	N. Y., N. H. & H.
Buffalo, Rochester & Pittsburg	Oct. —, 1897	Unchanged.
Camden & Amboy & N. J. R.R. & Transportation Co	May 1, 1867	Pennsylvania.
Camden & Atlantic.....	May 1, 1867	West Jersey & Seashore.
Cape Cod	1867	N. Y., N. H. & H.
Catawauqua & Fogleville	July 30, 1877	<i>Phila. & Reading.*</i> (Withdrawn 1890.)
Central R.R. Co. of New Jersey	Oct. —, 1867	Unchanged.
Chesapeake & Ohio.....	May 17, 1900	Unchanged.
Cheshire	July —, 1867	Boston & Maine.
Concord	July 12, 1867	Boston & Maine.
Connecticut & Passumpsic	May —, 1867	Boston & Maine.
Connecticut River.....	Feb. 9, 1867	Boston & Maine.
Connecticut Valley	Nov. 17, 1873	N. Y., N. H. & H.
Connecticut Western	Nov. 10, 1874	<i>Central New England.*</i> (Withdrawn 1881.)
Cumberland Valley	Dec. 20, 1888	Unchanged.

RAILROAD COMPANIES WHICH ARE OR HAVE BEEN MEMBERS OF THE EASTERN RAILROAD
ASSOCIATION—CONTINUED.

Name of Railroad Company.	Became a Member.	Present name or connection.
Danbury & Norwalk	Feb. 25, 1867	N. Y., N. H. & H.
Delaware & Hudson (see Rensselaer & Saratoga).		
Delaware, Lackawanna & Western.....	Dec. 13, 1886	Unchanged.
Delaware, Susquehanna & Schuylkill	June 2, 1894	Unchanged.
Eastern	Feb. 13, 1867	Boston & Maine.
<i>Eric</i> *	Aug. 9, 1867	Unchanged. (Withdrew March 8, 1870, re- turned June 13, 1873, withdrew May 9, 1877.)
Fall Brook Coal Co.'s Railways.....	Oct. 8, 1889	N. Y. C. & H. R.
Fitchburg	Feb. 16, 1867	Boston & Maine.
Fitchburg & Worcester	Apl. 30, 1867	N. Y., N. H. & H.
Flushing & North Side.....	May 31, 1871	Long Island.
Hartford & New Haven.....	Feb. 16, 1867	N. Y., N. H. & H.
Hartford, Providence & Fishkill.....	Feb. 18, 1867	N. Y., N. H. & H.

Housatonic.....	Mar. 10, 1867	N. Y., N. H. & H.
<i>Huntingdon & Broad Top Mountain*</i>	Feb. 19, 1889	Unchanged. (Withdrew April 1, 1905)
Lehigh Coal & Nav. Co.....	Oct. 18, 1869	Lehigh Valley.
Lehigh Valley	Oct. 19, 1869	Unchanged.
Long Island (made up of several roads already members, together with others not heretofore members)	1877	Unchanged. (Withdrew 1893, returned Apl. 1, 1898.)
Maine Central	May 20, 1867	Unchanged.
Manchester & Lawrence	June 13, 1868	Boston & Maine.
Naugatuck	Feb. 25, 1867	N. Y., N. H. & H.
New Bedford & Taunton	1867	N. Y., N. H. & H.
New Haven & Northampton	June —, 1867	N. Y., N. H. & H.
New London Northern.....	Apl. 4, 1867	<i>Central Vermont.*</i>
New York Central.....	Mar. 5, 1867	N. Y. C. & H. R.
New York & New Haven	Feb. 23, 1867	N. Y., N. H. & H.
New York, Ontario & Western.....	Oct. 7, 1897	Unchanged.
New York, Providence & Boston	Apl. 25, 1867	N. Y., N. H. & H.
Norfolk & Western	May 29, 1888	Unchanged

RAILROAD COMPANIES WHICH ARE OR HAVE BEEN MEMBERS OF THE EASTERN RAILROAD
ASSOCIATION—CONTINUED.

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Name of Railroad Company.	Became a Member.	Present name or connection.
North Eastern (of South Carolina)	May —, 1878	Atlantic Coast Line.
Northern Central	1867	Pennsylvania.
Northern (New Hampshire)	Feb. 21, 1867	Boston & Maine.
North Pennsylvania	Mar. 2, 1867	<i>Phila. & Reading.*</i>
Norwich & Worcester	Apr. —, 1867	N. Y., N. H. & H.
Ogdensburg & Lake Champlain	Mar. 30, 1867	<i>Rutland.*</i>
Old Colony & Newport	Feb. 21, 1867	N. Y., N. H. & H.
Pennsylvania	Feb. 18, 1867	Unchanged.
Pennsylvania Company	Aug. —, 1879	Unchanged.
Pennsylvania & New York Canal	Nov. 15, 1880	Lehigh Valley.
Petersburg.	May 16, 1881	Atlantic Coast Line.
Philadelphia & Baltimore Central	1867	Phil., Balt. & Wash.
Phila., Wilmington & Balt.	Oct. 13, 1867	(Name changed to Phila., Balt. & Wash.)

<i>Philadelphia & Reading*</i>	Feb. 26, 1867	Unchanged. (Withdrew Sept. 6, 1888.)
Pittsburg, Cincinnati & St. Louis.	Sept. 10, 1879	P. C. C. & St. L.
Portland, Saco & Portsmouth.	May 13, 1867	Boston & Maine.
Portland & Kennebec.	Mar. 7, 1867	Maine Central.
Portland & Ogdensburg.	July —, 1879	Maine Central.
Providence & Worcester.	1867	N. Y., N. H. & H.
Providence, Warren & Bristol.	Apl. 16, 1867	N. Y., N. H. & H.
Rensselaer & Saratoga.	May —, 1867	Delaware & Hudson
Richmond & Alleghany.	May 28, 1881	Chesapeake & Ohio.
Richmond & Petersburg.	Dec. 14, 1876	Atlantic Coast Line.
Richmond, Fredericksburg & Potomac.	Apl. 15, 1876	Unchanged.
Rome, Watertown & Ogdensburg.	Apl. 8, 1867	N. Y. C. & H. R.
Rutland & Burlington.	Apl. 12, 1867	<i>Rutland.*</i> (Withdrew 1872.)
Seaboard Air Line (made up of several roads already members, together with others not heretofore members)	Changed from Seaboard & Roanoke, 1890. (Withdrew July 1, 1898, returned Dec. 19 1901.)
Seaboard & Roanoke.	Apl. 15, 1867	Seaboard Air Line.

RAILROAD COMPANIES WHICH ARE OR HAVE BEEN MEMBERS OF THE EASTERN RAILROAD
ASSOCIATION—CONTINUED.

Name of Railroad Company.	Became a Member.	Present name or connection.
Shore Line.....	Sept. 18, 1867	N. Y., N. H. & H.
Southern.....	Mar. 12, 1900	Unchanged.
Taunton Branch.....	Mar. 16, 1867	N. Y., N. H. & H.
Troy & Boston	May 27, 1867	Boston & Maine.
Vermont & Massachusetts	Nov. 30, 1867	Boston & Maine.
Vermont Central & Vermont & Canada	1867	<i>Central Vermont</i> . * (Withdrew Sept. 12, 1901.)
Vermont Valley	1878	Boston & Maine.
West Chester & Philadelphia	June 17, 1867	Phila., Balt. & Wash.
Western	Feb. 12, 1867	N. Y. C. & H. R.
Western Maryland	Dec. 19, 1902	Unchanged.
West Jersey	June —, 1879	West Jersey & Seashore
West Va. Central & Pittsburgh	Dec. 19, 1902	Unchanged.

Wilmington & Weldon	Jan. 2, 1877	Atlantic Coast Line.
Wilmington, Columbia & Augusta	Jan. 2, 1877	Atlantic Coast Line.
Worcester & Nashua	Apl. 30, 1867	Boston & Maine.

* Roads in italics are not at present members of the Association.

A BRIEF STATEMENT OF SOME OF THE CAUSES
WHICH CONTRIBUTED TO THE ORGANIZA-
TION OF THE ASSOCIATION.

Prior to the year 1866, a large amount of money was paid to patentees and speculators in patents by railroad officials for the settlement of claims which, had they been properly investigated, probably could not have been legally enforced. This in a great measure was owing to lack of knowledge of patent law on the part of the railroad officials, and, also, to their inability to devote the time necessary for a thorough investigation of such claims. As a consequence, settlements were frequently made on any terms obtainable. Many settlements thus made proved to be of no value, the party settled with not being the true inventor, or the patented device for which license was purchased being itself an infringement of some patent, thus necessitating another settlement with some other claimant. The result of such a method was to embolden unscrupulous parties to sell a license to some road at a low figure as an inducement to purchase, using the prestige of such sale as a means whereby larger sums might be obtained elsewhere. Licenses were frequently sold that withheld rights supposed by the purchaser to be included and for which payment would have eventually to be made in addition to the original purchase. For example, the right to send to, or receive from another road a car equipped with some device for the use of which a license fee had been paid; but upon examination the license was found to be so worded as not to convey the right to send or receive a car equipped with the device. Many licenses were silent as to the rights of the purchaser in the event of an extension of the life of the original patent, all of which were supposed by the purchaser to be the natural adjuncts of a license. Claims such as these

were being made under patents covering all kinds of railroad equipment and had already become a source of continual annoyance, and large expense, to the officials of all the railroads of the country.

On July 25, 1866, Daniel L. Harris, President of the Connecticut River Railroad Company, at Springfield, Massachusetts, addressed a circular to each of the railroad companies in the Eastern States, calling attention to the rapidly increasing number of claims being made for alleged infringement of patents, and the necessity for some concerted action on the part of the railroads for mutual protection; also suggesting the advisability of engaging an expert to investigate such claims. Particular attention was called to a claim then being vigorously pressed under the Bachelder and Thompson patent for double acting brake mechanism. This patent had been assigned and issued to one Henry Tanner, causing the device to be better known among railroad men as the "Tanner Brake."

Under a decision rendered by the United States Circuit Court at Chicago, the patent had been sustained and damages to the amount of \$455.00 per car, per year, for the extended term (7 years) alone, had been awarded as the saving effected in the wages of brakemen by its use. Under such a decision, if sustained, the patent would be made to cover almost every passenger brake equipment in the United States, and it was then estimated that the aggregate amount of such an award would be about fifty million dollars on the railroads of the country, who were not licensed for the extended term, even if they were already licensed for the original term for which the patent was granted.

As a result of the circular letter of July 25, 1866, and another on the same subject issued August 20, 1866, Stephen M. Whipple, of North Adams, Massachusetts, was employed by the railroads to investigate the merits of the Tanner brake and other claims. He having been engaged in the promotion of several patented devices used upon railroads, among

others the Turner brake, was acquainted with the inside history of this class of patents, and the claims made thereunder.

On December 27, 1866, a call signed by Daniel L. Harris, President of the Connecticut River Railroad; Genery Twitchell, President of the Boston & Worcester Railroad; and William D. Bishop, President of the Naugatuck Railroad, was issued for a meeting of those interested in a more perfect organization of the Eastern railroad companies for mutual defense against "unjust claims for patents," and suggesting that authority be vested in "a committee to examine, contest, settle, or otherwise dispose of any and all patent claims against any company belonging to the organization"; meeting to be held at the Boston & Lowell Depot, in Boston, on January 23, 1867.

A severe snowstorm which took place at the date of the proposed meeting necessitated its postponement to February 6, 1867, at which time it was held, and the following railroad companies were represented:

Boston and Maine; Fitchburg; Eastern; Rutland and Burlington; New Bedford and Taunton; Danbury and Norwalk; Portland, Saco, and Portsmouth; Boston, Concord and Montreal; Boston and Lowell; Connecticut River; Cheshire; Hartford, Providence and Fishkill; Taunton Branch; Philadelphia, Wilmington and Baltimore; New Haven and Northampton; New York Central; and Providence and Worcester. (18 companies).

The meeting was called to order by D. L. Harris.

Francis Cogswell, President Boston and Maine Railroad Company, was chosen Chairman, and A. E. Swasey, Superintendent Taunton Branch, Secretary. Messrs. Edwards, Harris, Winslow, Birchard, and Fairchild were chosen to prepare a constitution for the Association, which was submitted at that meeting and adopted.

The Executive Committee named in the Constitution met for organization at the St. Nicholas Hotel, in the City of New

York, on Wednesday, May 8, 1867. At that meeting Isaac Hinckley, President Philadelphia, Wilmington and Baltimore Railroad Company, was elected President; Daniel L. Harris, President Connecticut River Railroad Company, Secretary; and John B. Winslow, Superintendent Boston and Lowell Railroad Company, Treasurer.

Stephen M. Whipple was definitely employed as General Agent of the Association, and the Secretary was authorized to retain such legal counsel and assistants as might from time to time be necessary, reporting his action to the Committee.

By-laws for the government of the Executive Committee were adopted at this meeting, and the organization of the Eastern Railroad Association as such, was perfected.

The original Constitution and By-laws will be found on pages 51-57.

TANNER BRAKE CASE.

As already stated, the claim under the Tanner brake patent, taken in conjunction with the rapidly increasing number of claims for alleged infringement of patents on all kinds of devices in use upon railroads, led to the formation of both the Eastern and Western Railroad Associations at nearly the same time.

The claims under the Tanner patent were so complicated in consequence of the number of assignments and reassignments, sales of territorial rights and reconveyances in whole or in part, that even if the validity of the patent had not been open to question, there was no certainty of immunity from further demands if a settlement was made with anyone of the claimants. As a matter of fact it required about fourteen years for the courts to determine in whom the title to the extended term of that patent rested.

At a meeting of the Executive Committee, held September 11, 1872, the following resolution was adopted in regard to these claims:

“Resolved, That the claim of Tanner Brake, so-called, is, in the opinion of the Executive Officers of this Association, an imposition, and that this Association should contest the same to the fullest extent in every case which may arise against any company belonging to the Association.”

In view of these facts it may be of interest at this time to outline the status of car brake invention at and shortly prior to the formation of the Association, in order to more fully comprehend the origin and progression of the efforts made under the Tanner brake patent to subject the railroad companies to an enormous tax for what they honestly believed they already had the right to use, viz: Double-acting Brakes.

The single truck car equipped with an arrangement of brake acting only upon two wheels thereof was, as railroad-ing developed, replaced with larger and heavier cars having a truck at each end and equipped with brakes acting on the wheels of each truck, and so connected that the brakes could be applied from either end of the car. The next step in these improvements was to so arrange levers in connection with those already in use, that the brakes could be applied to all the wheels of each truck and with an equal pressure on each wheel. Each step in this march of improvement was punctuated with one or more patents claiming its invention.

We are informed that as early as 1834, Henry R. Campbell, Chief Engineer of the Philadelphia and Germantown Railroad, equipped the cars of that road with a brake acting on the *four* wheels of the coach body formation of car then in use.

In 1839, George Griggs, Master Mechanic of the Boston and Providence Railroad, obtained a patent for a device whereby the engineer, by means of a rope, could apply the brakes on the wheels of both trucks at the same time. This was probably the first brake containing the elements of a double-acting brake as applied to two trucks, and was in actual service during several years upon tenders of the Boston and Albany Railroad, and also upon those of the Boston and Providence Railroad.

In 1845, J. Millholland invented and applied to a car on the Baltimore and Susquehanna Railroad what was known as the "Drum Brake"; which was also a double-acting brake. Two years later, viz: June 26, 1847, Asahel G. Bachelder and Lafayette F. Thompson filed an application for a patent for a bunter brake, constructed so as to apply the brakes to the wheels of both trucks by the impact of two or more cars coming together and forcing in a protruding bunter (claiming invention in 1846).

November 14, 1848, C. B. Turner obtained a patent for a combination bunter and windlass brake.

Nehemiah Hodge, October 2, 1849, and F. A. Stevens, November 25, 1851, obtained patents for double-acting brake mechanisms which, by reason of their simplicity and efficiency, superseded all preceding inventions of this nature, and were in use upon almost all the roads of the country at the date when the Eastern Railroad Association was formed.

In the meantime, the application filed by Messrs. Bachelder and Thompson, in 1847, remained dormant in the Patent Office until 1852, when Henry Tanner visited the Patent Office with a view to obtaining a re-issue of the Turner patent of 1848. While so engaged he discovered that the Bachelder and Thompson application of 1847, was still unacted upon. He is said to have purchased from Bachelder and Thompson, for one hundred dollars, all their right to a patent therefor. As their assignee, he applied for a patent. The Bachelder and Thompson papers, which had remained unacted upon in the Patent Office during five years, were returned. New papers and drawings were filed. Mr. Tanner's attorney was notified that the drawings did not correspond with the old model in the Patent Office, whereupon he sent to Washington a new model to agree with the new specifications and drawings. This last model was equipped with a center lever and resembled a double-acting brake invented by Williard I. Nichols, Master Car Builder of the Hartford and New Haven Railroad, at Hartford, Connecticut, in 1846 or 1847, which brake was in successful operation on that road. Mr. Nichols died shortly after perfecting his brake and no patent had been sought for the invention. Henry Tanner and Thomas Sayles (assignee of Tanner) appear to have been aware of this invention and visited the widow of Mr. Nichols, obtaining from her (as she expressed it to the writer) "all of Mr. Nichol's papers," and promising her financial help in the event of success. There was no doubt in the minds of those who made a thorough investigation of this transaction more than thirty years ago, that Tanner made use of Nichols' idea in connecting the brakes

of both trucks so as to apply them from either end of the car, when obtaining the patent issued to him as assignee of Bachelder and Thompson, July 6, 1852, but claiming the prestige of invention dating back to Bachelder and Thompson's application of June, 1847, thus endeavoring to antedate every effective double-acting brake invented since that date, especially the Hodge and Stevens brakes which as already stated were then in general use.

As early as 1861, Thomas Sayles (assignee of Henry Tanner) brought suit against the Chicago and North Western Railroad Company, at Chicago, for alleged infringement of the so-called Tanner patent. The decree of the court in that case awarded such extraordinary damages to the complainant that an appeal was taken to the United States Supreme Court, which resulted in a decision, November 18, 1878, reversing the decree of the Circuit Court, and deciding that the brake in use on the Chicago and North Western Railroad did not infringe the Tanner patent; the Supreme Court thus leaving the validity of said patent an open question. Mr. Sayles thereupon instituted forty-seven suits against members of the Association. In the meantime the patent had expired. He, however, believed that he had the right to commence suits in equity or at law at any time within six years after the expiration of the patent. The suits brought by him after the expiration of the patent were all equity suits, and his right to thus sue was contested by the Eastern and Western Railroad Associations. Decisions in some of the courts on this question were in favor of Mr. Sayles, while in others they were adverse to him. Issue was joined, and upon this question an appeal in two cases was taken to the United States Supreme Court, one of these being that of *Sayles v. The Lake Shore and Michigan Southern Railway*, and the other *Sayles v. the Richmond, Fredericksburg and Potomac Railroad*. The United States Supreme Court sustained the decision of the courts below, being in these cases the United States Circuit Court, Northern District of Illi-

nois, and United States Circuit Court, Eastern District of Virginia, and dismissed the bill of complaint, May 8, 1882. Before the date of hearing in the United States Supreme Court Mr. Sayles died, and when the decisions were rendered his legal representative, Mr. Charles T. Root, found himself without right of action, it then being too late to commence suits at law to replace the equity cases which the decision of the Supreme Court had terminated. Mr. Root, however, endeavored to get a rehearing from the Supreme Court; failing in that, he petitioned Congress for an enabling act whereby he could commence suits at law as of same date as the equity suits dismissed by the decision of the Supreme Court, but met with no success.

A deed of release was obtained for each member of this Association, and at meeting, held July 12, 1882, the final settlement of this celebrated case was reported by the Secretary and his action approved, thirty years from the date of the patent granted to Henry Tanner, as assignee of Bachelder and Thompson, viz: July 6, 1852, from which date to 1874, licenses under this patent had been sold for either the original life of the patent, or for the extended term, or both, to steam and horse railroads as nearly as could be ascertained for a sum amounting to \$134,331.00. This only embraced roads known to have purchased licenses.

The claims under the so-called Tanner brake patent were so great and the attempt of its owners to cover all forms of double-acting brakes so outrageous, that while the Association was as a matter of fact formed for the purpose of investigating *all* claims made under patents, this particular one so overshadowed all others, that the first name suggested for the Association was the "Tanner Brake Association." An examination of the early correspondence shows that some of the papers were so endorsed.

METHODS OF ASSESSING, AND REDUCTIONS IN AMOUNT OF ASSESSMENTS SINCE DATE OF ORGANIZATION.

The original assessment was \$150.00 per million of dollars of gross receipts. The mileage was not at first taken into account. In fact, the division of the assessment between receipts and mileage was not thought of until it was found that to assess receipts alone was not strictly equitable, as some of the members had large receipts and small mileage, while others had large mileage and small receipts.

At annual meeting, May 27, 1868, Article IX of the original Constitution was amended so as to make the assessment as nearly as practicable, one-half on the gross receipts for the fiscal year preceding the making of the assessment, and one-half on the length of roads owned, operated, or controlled. The first assessment under the new rule was \$100.00 upon each million of dollars of gross receipts, and \$1.50 per mile of road. From time to time this assessment has been reduced until for the year 1902, when it was reduced to \$25.00 per million of dollars of gross receipts, and 25 cents per mile of road, and it has thus remained up to and including the year 1905.

ENTRANCE FEE ARRANGEMENT.

March 9, 1881, the question of fixing upon an entrance fee, in addition to the regular assessment laid upon new members, which should equal their pro rata share in the accumulated funds of the Association, at the time of their admission, was discussed and referred to a special committee to report at next meeting, which committee reported May 11, 1881. The Executive Committee was thereby authorized to establish an entrance fee to cover the proportional interest of new

members in the funds of the Association, and at second meeting, May 11, 1881, it was voted to make the entrance fee \$2.50 cents per mile in addition to the regular assessment or proportion of the same chargeable to new members, after May 11, 1881.

Under this arrangement the following railroad companies were admitted between May 11, 1881, and May 12, 1897, at which time the so-called "Waiver Agreement" was adopted:

Petersburg Railroad,	May 16, 1881.
Richmond & Allegheny Railroad (ab-	
sorbed by the Chesapeake & Ohio	
Railway, January, 1890),	May 21, 1881.
Delaware, Lackawanna & Western	
Railroad,	December 13, 1886.
Norfolk & Western Railway,	May 28, 1888.
Cumberland Valley Railroad,	December 20, 1888.
Huntingdon & Broad Top Moun-	
tain Railroad,	February 19, 1889.
Fall Brook Railroad,	October 8, 1889.
Delaware, Susquehanna & Schuylkill	
Railroad,	June 21, 1894.

WAIVER AGREEMENT.

January 26, 1897, it having been found that some railroads were deterred from joining the Association on account of the entrance fee, the advisability of a change was fully discussed and it was "voted that the Treasurer be instructed to prepare a statement showing the amount necessary to be added to the annual assessment of all new members to entitle them to a proportionate interest in the vested funds of the Association, and to report at next meeting."

On March 11, 1897, the subject of altering the rules governing the admission of new members was again taken up, and upon vote, Messrs. Ely and Folsom were made a sub-committee to report at next meeting any change deemed

desirable as to entrance fee, or the annual assessment to be paid by railroad companies, hereafter becoming members of the Association. The report of the sub-committee was presented at meeting held May 12, 1897, and was adopted and incorporated in the annual report of Executive Committee to the members at annual meeting held upon the same date, at which time the entire annual report was adopted by the members. The following extract from said annual report embraces the report of the sub-committee as presented in it:

"Resolved, That from and after this date new members may be admitted to this Association without paying initiation fees, upon their delivering to the Association their written waiver of any and all claims to the surplus funds which may have accumulated prior to their admission as members, and which may be divided among the present members in the event of the dissolution of the Association."

LIST OF RAILROAD COMPANIES ADMITTED TO MEMBERSHIP
UNDER WAIVER AGREEMENT.

Buffalo, Rochester & Pittsburg Ry. Co.,	September 9, 1897.
New York, Ontario & Western Ry. Co.,	September 9, 1897.
Long Island Railroad Co., which had withdrawn March 6, 1894, was read- mitted,	March 10, 1898.
Southern Railway Co.,	March 8, 1900.
Alabama Great Southern Railroad Co.,	March 8, 1900.
Chesapeake & Ohio Railway Co.,	May 9, 1900.
Seaboard Air Line Railway Co., which had withdrawn July 1, 1898, was readmitted by special vote,	December 19, 1901.
Baltimore & Ohio Southwestern Rail- road Co.,	October 9, 1902.
Western Maryland Railroad Co.,	January 8, 1903.
West Virginia Central & Pittsburg Railroad Co.,	January 8, 1903.

FORM OF WAIVER AGREEMENT.

In conformity with standing resolution adopted May 12, 1897, forming a part of the printed copy of the Constitution and By-Laws of the EASTERN RAILROAD ASSOCIATION, signed by us, which said resolution requires from railroad companies thereafter admitted to membership in said association without the payment of an initiation fee, a written waiver of any and all claims to certain funds belonging to the Association which may be divided among the present members in the event of the dissolution of the Association:

We, the undersigned, do hereby waive any and all claims to any surplus funds of the EASTERN RAILROAD ASSOCIATION which may have accumulated prior to the date of our admission to membership in said Association.

Dated at.....this.....day of

R.....Company,
 by.....

GENERAL AUDIT BY FINANCE COMMITTEE AND DISTRIBUTION OF SURPLUS FUNDS IN 1904-'05.

In the early part of the year 1904, the Finance Committee was instructed to make a general audit of the financial affairs of the Association, covering a period of nearly thirty-seven years. This action was taken with a view to determine upon an equitable distribution of the accumulated funds beyond an amount which upon examination would be found ample to retain for working or extraordinary expenses; also with a view to making any improvements in the methods of accounting and bookkeeping that might be found advisable. At meeting held December 8, 1904, the Committee reported the financial affairs of the Association correct in every particular, and recommended a pro rata distribution of surplus

funds among the members of the Association as of December 31, 1904. By resolution of the Executive Committee the recommendation was adopted and the Finance Committee was directed to make a pro rata distribution among the members of the surplus, as of December 31, 1904, which distribution was made on February 28, 1905.

In order to put in force some changes in the methods of accounting and in the duties of some of the officers of the Association, it was found necessary to make several material changes in the By-Laws, which were adopted at meeting held May 25, 1905. The Constitution and By-laws in force at this date will be found on pages 72-77.

MANAGEMENT.

Since the date of the organization of the Association no change has been deemed necessary in the method then adopted of managing its affairs by an Executive Committee, composed of nine members elected at each annual meeting of the Association. This Committee elects the officers of the Association, and fills any vacancies that may occur in its own body during the interval between annual meetings. In addition to the original list of officers, the offices of Vice-President, General Counsel, and an Auditor have been created; also a Finance Committee, composed of three members of the Executive Committee, all of whom are elected by the Executive Committee.

LOCATION OF GENERAL OFFICES OF THE ASSOCIATION SINCE DATE OF ORGANIZATION.

The General Office of the Association which had been from the date of its formation located in the office of the President of the Connecticut River Railroad, in Springfield, Massachusetts, was upon January 1, 1879, removed to the Boston & Lowell Depot, in Boston.

With a view to being in a locality more central to an increasing membership, the office was removed to the Grand Central Station, New York, November 1, 1880, where it remained until May 1, 1883, when it was removed to Washington, D. C. This last removal was for the purpose of being near the United States Patent Office, so as to facilitate the making of personal searches and examination of its records and patents, for use in the preparation of reports, etc.

On July 22, 1886, the property No. 614 F Street N.W., Washington, D. C., was purchased by the Association for its use and fitted up with vaults, etc., for the proper preserva-

tion of valuable material accumulated and to accumulate in the prosecution of its business.

PLACES OF MEETING.

From the organization of the Association until December 8, 1880, with few exceptions, the meetings of the Executive Committee and members were held at the St. Nicholas Hotel, on lower Broadway, New York. On December 8, 1880, the first meeting of the Executive Committee was held at the Windsor Hotel (5th Avenue, between 46th and 47th Streets), which, until its destruction by fire, March 17, 1899, might be considered the New York headquarters of the Association; after which date the meetings were for a time held at the Hotel Manhattan, corner of 42d Street and Madison Avenue, New York, but have during recent years been held at the Holland House, corner of 30th Street and Fifth Avenue, New York.

GENERAL REMARKS.

In response to inquiries from members 2,434 reports have been made from date of formation of the Association to and including October 12, 1905.

The subjects inquired about seem to have, in a great measure, followed the lines of invention necessary in order to keep pace with the constantly improving art of railroad transportation involving a vast number of devices and improvements thereon.

Thus we see that even brakes were not seriously considered in the construction of the first trains, but the "capabilities of hot water" were very soon realized and such speed attained by its use as to demand efficient braking apparatus, in the invention of which progression took place as called for by increasing speed and weight of trains, until the perfecting of inventions for the manufacture of braking mechanism has become a science of itself.

Car coupling, other than the primitive chain or link and pin, soon became a fruitful subject for inventors. Patents for alleged improvements in car couplers followed each other so rapidly and so constantly from about the time the Association was organized, that 7,329 patents for car couplers of all kinds have been granted up to the present date, October 25, 1905.

These subjects with hundreds of others developed as necessity or the growing luxury of railway transportation demanded, kept the Association busy in their investigation with a view to avoiding litigation against its members by determining in advance if possible whether the use of some device inquired about would infringe any existing valid patent.

In addition to reports on subjects appearing to be in the natural sequence of railroad progression, the latitude of

inquiry as to possible infringement, etc., would appear to the lay mind as most extraordinary, but an employee of the Association is not astonished even though an inquiry is received for a report on a patent for "ship's davit" for lowering or hoisting boats, a bath-tub, a holder for toilet paper, a beefsteak broiler, an artificial leg, or a modern steel-constructed car, the latter possibly involving the examination of several hundred patents. As a matter of fact all of these subjects and hundreds of others have already been passed upon by the Association.

During the early existence of the Association there were more suits to be defended than inquiries to be answered, but during recent years the number of suits has decreased while the number of inquiries has vastly increased. There have been 198 suits brought against members of the Association since its formation, 6 of which were appealed to the United States Supreme Court, and 2 to the United States Circuit Court of Appeals. (These 198 suits were distributed over 19 States.) In each of the appealed cases the final decision has been, as already stated, in favor of the Association, thus showing the soundness of its decisions, based as they are on careful and fair examination, and exhaustive investigation, before rendering any opinion. This method of transacting business has, without doubt, been a factor in preventing litigation to any great extent during more recent years, while it encourages inquiries from members before the adoption by them of a device, in order to avoid possible infringement resulting in litigation in the future.

The result of a single suit may be very far reaching in an organization whose members have interests so much in common, and the saving or loss to the railroads a matter well worthy of careful consideration.

Space will not admit of an enumeration of all the suits brought against members of the Association since its organization, but a brief review of a few of them, and of other work done, showing the results of the efforts of the Association in behalf of its members may be of interest.

EMIGH-STEVENS BRAKE CLAIM.

The Stevens brake patent of November 25, 1851, extended seven years, and expiring November 25, 1872, was the cause of protracted litigation which began sometime prior to the formation of the Association. The original term of the patent was owned jointly by Emigh and Stevens, the extended term by Stevens alone.

The validity of the patent appears to have been determined in a suit against the Chicago and Rock Island Railroad Company, and damages fixed at \$50.00 per car, per year.

On appeal to the United States Supreme Court this decision was sustained. Other pending suits in the west were then settled.

Suit against the Baltimore & Ohio Railroad Company (not then a member) was commenced in 1864, resulting December 7, 1872, in a decree sustaining the patent.

Several suits were brought against members of the Association, and when the Baltimore & Ohio Railroad Company joined the Association in 1873, the defense of these suits was assumed.

The Executive Committee appears never to have questioned the validity of the patent, its efforts being directed to obtaining a reduction of the amount of damages or profits awarded by the courts.

A final decision in the Baltimore & Ohio Railroad case fixed the damages at \$25.00 per car, per year, instead of \$50.00, but through the continued efforts of the Association a settlement of all claims against the members was finally effected at the rate of \$20.00 per car, per year, for all infringing cars using the Stevens brake proper, and \$10.00 per car for the modification known as the "dead lever."

LICENSES UNDER THE HODGE BRAKE PATENT, AS TO RIGHT
TO SEND AND RECEIVE CARS HAVING THIS DEVICE
ATTACHED.

The purchase by the railroad officials, in good faith, of defective licenses, owing to their lack of legal knowledge, has already been referred to, but this history would not be complete without some further reference to such claims set up by the assignees of Nehemiah Hodge after his death, which took place in 1864.

In the early part of 1869, Mr. Hodge's assignees made claims upon a number of the members for alleged violation of their licenses, in sending cars equipped with the brake on to the roads of other companies, especially "Line Cars" so-called, which ran over their respective roads in the transaction of joint business. Nearly all the companies had purchased licenses from Mr. Hodge, which they supposed to be full and perfect, for the use of his patent. He, however, gave licenses on a variety of printed forms made more or less perfect by pen and ink additions. Some of these licenses gave rights and privileges that were not mentioned in others. His assignees discovered this laxity and determined to take advantage of it. As Mr. Hodge kept no detailed record of his sales, the assignees were at a loss to determine who had perfect or defective licenses. Claims were therefore made broadcast. After much annoyance to the members, and in view of a proposition from the assignees to settle with all found liable for a reasonable sum, a circular, dated June 1, 1869, was issued requesting the members to furnish copies of their license under the Hodge patent. A majority complied with that request. Upon examination of the same it was found that very few of the companies were fully protected. After much delay and frequent interviews, an arrangement was concluded between the Executive Committee and the assignees or owners of the patent whereby

the members could settle upon terms deemed mutually advantageous. The terms were adjusted by a sliding scale, from \$2.50 to \$10.00 per mile of road operated, according to the amount of privileges given or withheld by the license already granted, or in cases in which no licenses had been obtained.

These claims, made during the comparative infancy of the Association, appear to have acted to some extent as object lessons, as since that time licenses have quite frequently been submitted to the General Counsel of the Association for approval as to their construction before purchase by members.

LOCOMOTIVE ENGINE SAFETY TRUCK COMPANY *vs.* PENNSYLVANIA RAILROAD COMPANY.

The defense against claim of the Locomotive Engine Safety Truck Company, for lateral moving truck under the forward end of a locomotive, better known as the "swing truck," is an example of the value of the Association to the railroad companies forming its membership.

This claim was based upon alleged infringement of patent to Alba S. Smith, No. 34,377, for improvement in trucks for locomotives, dated February 11, 1862. The matter was referred to the Association by the Pennsylvania Railroad Company, and after a thorough investigation the patent was reported invalid for lack of invention.

The first railroad company to be sued was the Erie Railway Company, not then a member. Judgment was obtained against said road and a compromise resulted.

On March 6, 1873, suit was commenced against the Pennsylvania Railroad Company in the United States Circuit Court, Eastern District of Pennsylvania. Notwithstanding the adverse decision in the Erie Railway case, the Executive Committee decided to adhere to its former opinion, and the defense was assumed by the Association. The decision of

the Circuit Court again sustained the patent. In the spring of 1880, the Master, to whom the case was referred, awarded damages to the amount of \$89,644.00 with interest from date of use, which award was confirmed by the court. An appeal was taken to the United States Supreme Court, and was argued October 26, 1883. On March 3, 1884, opinion of the court was delivered by Mr. Justice Gray, reversing the decree of the lower court and dismissing the suit. There were in all thirty-four members of the Association liable to suit under this patent. The estimated damages in the case of the Pennsylvania Railroad aggregated about \$250,000.00.

Several railroad companies not members of the Association, settled the claims under this patent, but as has been stated, the Executive Committee, believing in its original decision, declined the proposition made September 8, 1880, to settle for all the members for the sum of \$150,000.00. Eleven other suits which had been commenced against the members by the Locomotive Engine Safety Truck Company were disposed of as a result of the decision in the Pennsylvania Railroad Company's case.

CLAIM OF JOHNSON AND SANDFORD FOR OBLONG HOLES IN RAIL CONNECTIONS.

In May, 1872, Asa Johnson and Thomas S. Sandford brought suit in the United States Circuit Court for the Eastern District of New York, against the Flushing and North Side Railroad Company, for alleged infringement of patent to Asa Johnson, dated May 19, 1857, reissued April 16, 1872, for oblong holes in metal plates for roofs of buildings.

This was an attempt to subject all railroad fish plates having elongated bolt holes permitting of expansion or contraction of the rails, to a royalty under the Johnson patent, which was evidently reissued with broader claims than in the original for the purpose of levying a tax upon the railroads. Considerable testimony was taken and the case argued before Judge Benedict, who, in August, 1878, dismissed the

bill. The case was then carried to the United States Supreme Court, and was argued March 24-27, 1882. On May 8, 1882, the Supreme Court sustained the court below, dismissing the bill of complaint.

Among the many exhibits produced by the defendant showing the application of the principle of this device prior to Johnson's original patent were two sections of rail, the end of one section being provided with a round hole to which was riveted a fish plate which projected beyond the rail two and one-half inches; the end of the other rail being provided with an *oval* hole to receive a bolt passing through a round hole in the projecting end of the fish plate. These rails were used on the Newcastle & Frenchtown Turnpike & Railroad Company's road as fastenings for T-rails as early as 1837. They were contracted for in England in 1835, and were delivered at Newcastle in 1836 and 1837. The contract, bill of lading, etc., were produced by the defense in addition to testimony of use for many years afterwards, and contributed largely to the defeat of the claim.

This suit illustrates a class of litigation which at first glance might appear trivial, but which experience has demonstrated frequently necessitates a large amount of research and careful investigation to *prove* that which appears so palpable, viz., that the idea is an old one and not patentable.

MILLER vs. PENNSYLVANIA RAILROAD COMPANY.

In 1883, Ezra Miller commenced suit against the Pennsylvania Railroad Company in the United States Circuit Court for the Southern District of New York, for alleged infringement of three patents granted to him for improvements in car couplers and platforms, the claim being based upon the use of the Janney platform and coupler. Damages were laid at \$124,000.00.

Trial was postponed from time to time on motion of the plaintiff, until July 9, 1885, when Ezra Miller died. In 1886,

the suit was revived by his executor, Ezra W. Miller, and came to trial February 1, 1887, before the Hon. Alfred C. Coxe, Judge, and a jury in New York City. After a trial lasting eleven days the court instructed the jury to find damages in favor of the plaintiff, for six cents.

On December 1, 1884, Ezra Miller had commenced a similar suit against the Pittsburg, Ft. Wayne & Chicago Railway Company, in the United States Circuit Court for the Northern District of Illinois. After his death this suit was also revived by Ezra W. Miller, and came to trial March 9, 1888, before the Hon. Henry W. Blodgett, Judge, and a jury, in Pittsburg, Pennsylvania. A verdict for \$2,100.00 was rendered in favor of the plaintiff, which verdict the court after hearing argument on the part of defendant for a new trial, set aside and a new trial was ordered, since which time no action has been taken.

Mr. Stephen M. Whipple, now deceased, formerly General Agent of the Association, took an active part in the revival of each of these Miller suits, on behalf of the estate of Col. Miller.

GREEN "DRIVEN WELL" LITIGATION.

On March 10, 1883, Benjamin F. Green brought suit in the United States Circuit Court for the District of New Jersey, against Henry S. Little, Receiver of the Central Railroad Company of New Jersey, for alleged infringement of reissued patent No. 4,372, granted to Nelson W. Green, May 9, 1871, for well tubing (better known as "driven well.") The original patent was No. 73,425, of January 14, 1868.

The conclusion reached by the Association was adverse to the validity of the patent, and the defense was assumed. A decree of injunction was sought, which was denied, and there this case rested.

Subsequently suits were brought against the Long Island Railroad Company and the Fitchburg Railroad Company, and numerous claims for infringement were from time to time made against other members.

On March 16, 1886, Nelson W. Green (the patentee) brought suit under the same patent in the United States Circuit Court for the District of Massachusetts against the Fitchburg Railroad Company. This suit was dismissed by the court upon its own motion February 7, 1894, for want of prosecution. Here the case rested until May 20, 1902, a period of more than eight years. On that date a petition was filed asking the court to reinstate the case on the ground of improper dismissal. This motion was denied and leave granted for the plaintiff to file a bill of exceptions.

Green, not being satisfied with the bill of exceptions, allowed by the court, carried the case to the United States Circuit Court of Appeals for the First Circuit. The opinion of that court, which was rendered January 3, 1903, dismissed the plaintiff's petition with costs to the defendant.

Two suits against parties not members of the Association were carried to the United States Supreme Court, one being *Eames v. Andrews et al.* In this case the United States Supreme Court fully sustained the patent.

In the case of *Andrews v. Hovey*, the patent came twice before the United States Supreme Court, which finally rendered an opinion, November 14, 1887, declaring the patent invalid. Some forty suits under the Green patent are still pending in the United States Circuit Court for the District of Massachusetts.

The tenacity of the patentee in thus keeping his claim before the public and in the courts during all these years, even after an adverse decision in the United States Supreme Court, is almost without parallel in the annals of patent litigation. However, it is not probable that it will again be a source of annoyance to the members of the Association.

Rights under the Green driven well patent were sold all over the country, and as the usual royalty asked was only \$10.00 per well (one tube), it was generally considered cheaper to settle than it probably would be to contest the claim or investigate its legality; thus large sums were in the

aggregate collected chiefly from farmers and small users. In 1888 it was estimated that there were 75,000 of these wells in the State of New York alone, and over a million in the whole country. The action of the Association in resisting the claims of the patentee has probably saved millions of dollars to the public, including its own members, who are very large users of such wells.

PLUMB *vs.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO., "BACK UP HOSE" CASE.

The suit of Duncan C. Plumb *v.* the New York, New Haven & Hartford Railroad Company, for alleged infringement of patent No. 348,289, granted to Edward W. McKenna, August 31, 1886, for air-brake attachment, was commenced in the United States Circuit Court for the District of Connecticut, December 30, 1897, the defense being conducted by the Association.

The patent in question was for an air-brake attachment commonly known as the "back-up-hose," used on the rear platform of a backing train for the purpose of retarding or stopping it independently of any action of the engineer. The device consisted of a short length of hose having a cock at one end, and a half-coupling at the other whereby connection could be made with the train-pipe, the hose being carried up to the rail of the platform into such position that the cock could be there operated by the brakeman.

That the "bleeding" of the train-pipe at any point in a train equipped with the Westinghouse automatic devices would apply the brakes was well known, and as a matter of fact the train-pipe cock under the steps or platform was frequently used for that purpose, the only difficulty being to find the use of the specific device shown in the McKenna patent. However, diligent and persistent search by the Association was rewarded in finding such ample evidence of prior use both in Western and Eastern railroads, for presentation to the court, that on October 31, 1899, the patent was declared invalid for lack of novelty in view of the prior art.

This was another instance of a claim which, although apparently trivial, might, if successful, have become very far reaching in effect. The Association recognized this and feeling confident of the result of a thorough investigation worked to that end, even after the contest had been given up by others and a settlement had been actually made by another association.

TUBMAN "BAY WINDOW" SUITS.

On December 13, 1887, William K. Tubman, of Baltimore, Maryland, commenced suit against the Wason Manufacturing Company, of Springfield, Massachusetts, for alleged infringement of patent No. 192,014, granted to George S. Roberts, June 12, 1877, by the building of four "bay window" cars for the Boston and Albany Railroad Company, under patent No. 335,770, granted to Bruce Price, February 9, 1886. These cars were substantially like those in use by the Pennsylvania Railroad Company, and also the cars of the Pullman Palace Car Company. The cars of the latter company being run over the roads belonging to members of the Association, rendered such members liable in case of a decision against the Wason Manufacturing Company, as though they owned them.

A claim similar to that made against the Wason Manufacturing Company had already been made against the Pennsylvania Railroad Company, which, being referred to the Association for opinion, was investigated and reported against by the General Counsel, his report being adopted at meeting of the Executive Committee held July 21, 1885.

Although Mr. Price was, by special agreement, required to defend the suit brought against the Wason Manufacturing Company, it was quite evident that any lack of a proper defense, or any compromise such as was threatened (on account of the small number of cars involved) would eventually affect members of this Association using the Price construction, who would then become the real parties interested.

Taking all these matters into consideration, in addition to a request on the part of Mr. Price for assistance in the defense, otherwise he would have to compromise the claim, and also to the conclusion arrived at by the General Counsel in his report against the claim made upon the Pennsylvania Railroad Company, the Executive Committee at meeting held February 1, 1888, instructed the General Counsel to render such assistance in the defense of the Wason suit as might be found necessary. This was done with a view to the possible protection of the members from what the Executive Committee viewed as a speculative claim under a patent that might be said to be inoperative, as it could not be used to any advantage by the railroads, but whose date might to some extent give it prestige over more recent and practical patents of that class, which were at that time being put into use by the railroads and the Pullman Palace Car Company. Considerable testimony was taken by both plaintiff and defendant from time to time until March 26, 1892, when in response to a petition by the plaintiff, a hearing was had before the House Committee on Patents, to test the legality of the action of the Association, not only in assisting in the defense of this particular case, but as to its very existence as an organization. The result of that hearing was: "Leave to withdraw."

The Wason case was argued January 3, 1893, and the bill dismissed, decree of dismissal being entered upon the order of Judge G. M. Carpenter, February 1, 1893.

On April 28, 1893, Mr. Tubman filed a petition in the United States Circuit Court, District of Connecticut, for leave to sue the New York, New Haven & Hartford Railroad Company, for alleged infringement of the Roberts patent of June 12, 1877, under what is known as the "Poor Plaintiffs' Act," approved July 20, 1892, which provides that the plaintiff, when a poor person, shall sue as such and that counsel shall be assigned to him by the court. On May 4, 1893, leave was given to prosecute cause under provisions of said act, and George P. McLean, United States District Attorney

for the District of Connecticut, was assigned by the court to represent complainant as attorney in the cause.

This suit was based upon the use by the defendant company of cars supplied by the Pullman Palace Car Company, said cars being constructed with bay windows.

The suit was carried on until August 13, 1893, when a stipulation was entered into extending time for taking testimony six months from August 5, 1894.

On August 15, 1893, an amended answer was filed, since which time no action in the suit has been taken.

In the meantime, viz: May 23, 1893, Mr. Tubman commenced suit under the same Act of Congress in the United States Circuit Court, Eastern District of Pennsylvania, against the Pennsylvania Railroad Company, for alleged infringement of the Roberts patent. The court appointed Mark W. Collet, Esq., attorney for petitioner.

A large amount of testimony was from time to time taken by both parties, ending, on June 12, 1894, by cross-examination of complainant's expert, since which time no further action has been taken.

These Tubman suits became notorious for the peculiar manner in which their prosecution was conducted, the Association and its officers being assailed by the aid of pamphlets and newspaper articles. A hearing was granted complainant before the House Committee on Patents. Application was made to the courts to restrain the officers of the Association from taking any action in these suits. Bills were introduced in Congress denouncing the Association and calling for its abolishment as an irresponsible trust, and each Attorney-General of the United States since 1888 has been urged to proceed against it under the "Sherman Anti-trust Law"; the result being that investigation of its methods has always shown that instead of being inimical to the rights of the *honest* inventor, or the owner of a *valid* patent, the Association has been ever ready to recognize such, its only object being to determine that fact as a matter of self-protection against fraudulent claims.

ORIGINAL CONSTITUTION
OF THE
EASTERN RAILROAD ASSOCIATION,
ADOPTED THE 6TH OF FEBRUARY, A. D. 1867.

ARTICLE I.

This Association shall be called THE EASTERN RAILROAD ASSOCIATION. While having for its general purpose the promotion of the railway interests, its leading object shall be the protection of its members against unjust claims made for invalid patents.

ARTICLE II.

Said Association shall embrace all railroad companies in New England, the States of New York, New Jersey, Pennsylvania, Delaware, and Maryland, and any others at the discretion of the Executive Committee, subscribing to these articles, and contributing to the expenses, in proportion to the gross receipts of their fiscal year preceding any assessment.

ARTICLE III.

The affairs of this Association shall be managed by a committee of nine, to be styled an Executive Committee, four of whom shall be the representatives of roads in the New England States, one the representative of a road in the State of Maryland, two the representatives of roads in the State of Pennsylvania, and two the representatives of roads in the State of New York. Said Committee for the first year, or until their successors are elected, as hereinafter provided, shall consist of the following persons, to wit:

From New England.

Daniel L. Harris, of the Connecticut River Railroad Company; R. D. Rice, of the Portland and Kennebec Railroad Company; John B. Winslow, of the Boston and Lowell Railroad Company; William D. Bishop, of the Naugatuck Railroad Company.

New York.

Gen. A. S. Diven, of the Erie Railroad Company; Azariah Boody, of the New York Central Railroad Company.

Pennsylvania.

Isaac Hinckley, of the Philadelphia, Wilmington and Baltimore Railroad Company; Edward H. Williams, of the Pennsylvania Central Railroad Company.

Maryland.

* J. L. Wilson, of the Baltimore & Ohio Railroad Company.

Any member of said Committee, ceasing to be the representative of the road for which he is appointed, shall cease to be a member of said committee. Said committee shall organize by the election of a Chairman, Secretary and Treasurer, who shall also be President, Secretary and Treasurer of the Association, and a majority of said committee shall constitute a quorum for the transaction of business. Meetings of the Committee may be called by either the Chairman or Secretary.

ARTICLE IV.

The annual meeting of this Association, for the election of officers, and for the transaction of other business, shall be held on the last Wednesday in May, at such hour and place

* As the Baltimore and Ohio Railroad Company did not become a member at that time, he did not become a member of the Executive Committee

as may from time to time be designated by the Executive Committee. Special meetings shall be called by the President upon the request of two members of the Executive Committee, or at the written request of the representatives of not less than five companies.

ARTICLE V.

The representatives of ten companies shall constitute a quorum at all meetings of the Association. Each company shall be entitled to one vote.

ARTICLE VI.

SECTION 1. It shall be the duty of the President to preside at all meetings of the Association. In the absence of the President a chairman *pro tem.* may be appointed. The presiding officer shall name or appoint all special committees, unless otherwise ordered by the Association.

SEC. 2. The Secretary shall notify each company of any meeting of the Association, by written or printed notice, at least ten days before such meeting, and shall keep a record of the proceedings of all meetings of the Committee and of the Association. It shall also be his duty to answer inquiries relative to patent matters, and to promptly furnish all the Associates such important information relative to patent claims as may come to the knowledge of the Executive Committee.

SEC. 3. It shall be the duty of the Treasurer to assess, collect, and disburse all the monies of the Association, under the direction of the Executive Committee, to whom he shall report as often as required, and at the annual meeting of the Association he shall make a report of the amount collected and expended.

ARTICLE VII.

SECTION 1. The Executive Committee shall have power to fill vacancies in its membership.

SEC. 2. Said Committee shall employ an intelligent and experienced expert to investigate and report on all patents, claims, and in contested cases to prepare for defence, to note the applications for new patents and extension of old ones; and when a claim is unfounded to expose, and, if practicable, to defeat the same, and generally to furnish such information as will enable the Executive Committee to reply to the inquiries of their correspondents touching patent matters and to act intelligently in adjusting patent claims. Said Committee, at their discretion, may employ counsel for consultation with themselves, or said expert, in regard to any matter or claim properly under investigation in pursuance of these articles.

SEC. 3. It shall be the duty of the Executive Committee whenever, in their opinion, a patent claim upon any device in actual use is just, or it is inexpedient to contest it, to negotiate for the settlement of the same, and if reasonable terms shall be offered for all the associate companies, and upon some basis just to each, they shall report the same to each company for acceptance.

SEC. 4. If, after the report of the Executive Committee, any company declines to make the proposed settlement, the Association shall be no longer bound to superintend the defence of any suit against that company, or pay any subsequent expenses of litigation on that subject.

SEC. 5. Whenever a suit is brought against any company, or a claim for infringing any patent upon which the Executive Committee have not reported for settlement as afore-said, it shall be the duty of that company to report to said Committee, and thereafter the said Committee shall manage the same at the expense of the Association.

SEC. 6. The Committee shall provide a suitable place for their meetings and for the safe keeping of all models, books, papers, and documents.

ARTICLE VIII.

The Chairman of the Executive Committee shall confer with the officers of similar railroad associations in the United States in relation to the settlement of patent claims, and the trial of patent cases, and said Committee may, if they deem it advisable, contribute from the funds of this Association to aid in the defence of any case, the issue of which involves the interests of the members of this Association.

ARTICLE IX.

The Executive Committee shall have the power, and it shall be their duty from time to time, as often as they judge the interests of the Association require, to make assessments upon the members of the Association in proportion to the gross receipts of each of the companies, members of this Association, for their fiscal year preceding the making of the assessment, for any expenses which may have been already incurred, or which shall be hereafter incurred, which in the opinion of the Committee should be borne by this Association; and each of the companies, members of said Association, does hereby severally agree with the Treasurer of said Association, when said assessment is made, to pay him the sum so assessed upon it, and that said Treasurer may maintain an action in his own name against each of said companies severally for the assessment so as aforesaid made upon it.

ARTICLE X.

Any company may withdraw from this Association by giving six months' notice in writing to the Secretary and paying, when assessed, its proportion of the current expenses of the Association to the end of said six months, and the expenses of any investigation or proceeding commenced prior to giving such notice.

ARTICLE XI.

This Constitution may be altered or amended by a vote of two-thirds of the members present at any regular or special meeting, provided that due notice of said proposed alteration or amendment shall have been given in the notice for said meeting.

ORIGINAL BY-LAWS.

First. The Committee shall meet for the transaction of business on the last Wednesday of May, and on the first Wednesdays of September, December, and March, in each year.

Second. The President shall have charge of the general correspondence of the Association and Committee.

Third. The Secretary shall have charge of the correspondence relating to Patent Claims and alleged improvements in Railroad Machinery, and shall, with the concurrence of the President, refer so much of said correspondence as may be thought best, to the Agent of the Association for his investigation and report, and after each stated meeting of the Committee, he shall report to the members of the Association the conclusions arrived at by said Committee on matters brought before them for examination and, upon the termination of any patent case, brought against any member of the Association, he shall report the decision to all the members.

Fourth. Whenever an assessment shall be made in pursuance of the ninth article of the Constitution, the Treasurer shall collect the same; and he shall make a full report of the financial condition of the Association whenever called upon to do so by the President.

Fifth. The Agent of the Association shall report to the Committee quarterly upon all matters that shall be referred to him for investigation. In case an action is brought against any member of the Association upon a patent claim, which the Committee decide to contest, he shall furnish the special matter for the answer, and shall see that the evidence is prepared and that the witnesses are present at the trial.

Sixth. Bills and accounts against the Association shall be paid by the Treasurer, after they have been audited by the Agent and approved by the President or Secretary.

Seventh. It shall be the duty of each member of the Committee to attend the quarterly meetings, or give a reason to the Chairman for non-attendance.

Eighth. These By-laws may be altered or amended at any quarterly meeting by a majority of the Committee present at such meeting.

REORGANIZATION OF THE ASSOCIATION, 1878.

The constantly increasing business of the Association, and the evident desire of its members to continue its existence indefinitely, caused the Executive Committee in 1878, to consider its reorganization on a more permanent and satisfactory basis and with a view to the concentration of an efficient working force in a home of its own. Its only office heretofore had been in common with that of the President of the Connecticut River Railroad Company, at Springfield, Massachusetts, where, with the exception of that of the General Agent, the time of no person was *exclusively* devoted to its service.

It was especially desirable that its legal affairs should be managed by a competent officer of the Association, instead of being, as heretofore, assigned to local attorneys in whatever district a suit might be pending. This method of transacting business had proved to be both expensive and inconvenient.

At a meeting held September 4, 1878, a committee of three was appointed to perfect a reorganization of the Association and report at an early date at a meeting to be called. The committee consisted of A. A. Folsom, William D. Bishop, and John B. Winslow, the name of President Kneass being added.

A special meeting of the Executive Committee was called for October 1, 1878, at which time the By-laws framed by the special committee were discussed and approved, and a special meeting of the members ordered for December 4, 1878, when the revised Constitution would be presented.

The special meeting of the members on December 4, 1878, was largely attended; the proposed Constitution was passed upon *seriatim*, and with a few amendments was adopted, as follows:

CONSTITUTION OF 1878.

ARTICLE I.

This Association shall be called "THE EASTERN RAILROAD ASSOCIATION." While having for its general purpose the promotion of the railway interests, its leading object shall be the protection of its members against unjust claims made for patented inventions.

ARTICLE II.

This Association shall be composed of railroad companies of New England, and any others, at the discretion of the Executive Committee, subscribing to the articles, and contributing to the expenses of the Association. Each company to be represented by a duly authorized person.

ARTICLE III.

SECTION 1. The affairs of the Association shall be managed by an Executive Committee, of nine members, who shall be elected every year at the Annual Meeting of the Association. They shall submit at each Annual Meeting of the Association a report of the operations of the past year, and of its financial condition, and any member of said Committee, ceasing to be the representative of the company for which he is appointed, shall cease to be a member of said Committee.

SEC. 2. Said Committee shall organize by the election of a Chairman, Secretary, and Treasurer—the Chairman and Treasurer to be selected from its own members—who shall also be President, Secretary, and Treasurer of the Association. A majority shall constitute a quorum for the transaction of business; they shall also appoint such Standing Committees as they may deem requisite.

SEC. 3. Said Committee shall provide a suitable place for the general office of the Association, where all models, books, papers, and documents may be deposited for safe-keeping.

SEC. 4. Said Committee shall have power to elect such other officers and employees, and appoint such legal counsel, as may be necessary for the interests of the Association, and fix their compensation, shall fill vacancies in its membership and make by-laws for its own government.

SEC. 5. Meetings of the Executive Committee may be called at any time by the Chairman, or shall be when requested by any two members of the Committee.

ARTICLE IV.

SECTION 1. The Annual Meeting of the Association for the election of the Executive Committee and for the transaction of other business shall be held on the second Wednesday in May, at such hour and place as may be designated by the Executive Committee, and the fiscal year of the Association shall terminate on the 31st of December.

SEC. 2. Special meetings of the Association shall be called by the President, upon the request of two members of the Executive Committee, or at the written request of the representatives of not less than five companies.

SEC. 3. The representatives of ten companies shall constitute a quorum at all meetings of this Association. Each company shall be entitled to one vote.

ARTICLE V.

SECTION 1. It shall be the duty of the President to preside at all meetings of the Association. In the absence of the President a President *pro tem.* may be appointed. The presiding officer shall name or appoint all Standing Committees, unless otherwise ordered by the Association, and the President shall be, *ex officio*, a member of all committees.

SEC. 2. The Secretary shall keep the minutes of the Asso-

ciation, have charge of the models, archives, and property not belonging to the finances of the Association; he shall give his time exclusively to its service, and receive therefor such salary as the Executive Committee may fix. He shall notify each company of any meeting of the Association, by written or printed notice, at least ten days before such meeting. He shall answer all inquiries from members of the Association relative to patent matters, and furnish them with written information regarding patents or patent claims that may be in possession of the Executive Committee. He shall also perform such duties in examining the validity of patents, and preparing cases for defence before the courts, and such other duties as the Executive Committee may direct. And in order that this Association may become more extended in its usefulness, it shall be the duty of the Secretary to collect information relative to American Railway operating, and distribute the same as may be directed by the Executive Committee.

SEC. 3. The Treasurer shall collect all assessments as made by the Executive Committee, and disburse all the moneys of the Association, under the direction of the Executive Committee, to whom he shall report as often as required, and at the Annual Meeting of the Association shall submit a statement, showing its financial condition, with a detailed exhibit of the receipts and expenditures of the past year.

ARTICLE VI.

SECTION 1. Whenever, in the opinion of the Executive Committee, a patent submitted for examination by any member is valid, or whenever it is deemed inexpedient to contest any claim made upon a member of the Association for the use of a patented invention, it shall be the duty of said Committee, at the request of any of the associate members, to negotiate either for the use of said patent, or for a settlement of the claim preferred, and when effected, to report the same to each associate member for acceptance.

SEC. 2. If any member declines accepting the basis of settlement so offered (and a failure to acknowledge receipt of said notice for fifteen days after its date shall be deemed an assent to the terms thereof) the Association shall not be responsible for the defence of any suit, or for the expenses of any litigation against that company, and growing out of that case, incurred subsequent to date of said notice.

SEC. 3. Whenever a suit is brought against any member of the Association for infringing upon a patent reported upon as invalid, or whenever a claim is made against any member for the use of a patent reported upon as valid, and for which a basis of settlement has been agreed upon as aforesaid, it shall be the duty of that member to make report of such suit or claim to the Secretary, and thereafter the said Committee shall manage the same at the expense of the Association. Provided, the member so reporting has not previously declined, or shall not subsequently decline, such basis of settlement as has been or may be recommended by the Executive Committee.

SEC. 4. Members of the Association shall not settle any suit or claim against them after being advised by the Secretary that a similar suit or claim is in charge of the Association for defence in behalf of any of its members without the consent of the Secretary, endorsed by the President.

ARTICLE VII.

Any member wilfully violating these Articles may be stricken from the roll of membership by a vote of two-thirds of the members present, at any annual or special meeting, provided due notice of such proposed action shall be given in the call of said meeting.

ARTICLE VIII.

The Chairman of the Executive Committee shall confer with the officers of similar railroad associations in the United States, in relation to the settlement of patent claims and the

trial of patent cases; and said Committee may, if they deem it advisable, contribute from the funds of the Association to aid in the defence of any patent case the issue of which involves the interests of the members of the Association.

ARTICLE IX.

The Executive Committee shall have the power, and it shall be their duty, from time to time, as often as they judge the interests of the Association require, to make assessments upon members of the Association, one-half, as nearly as practicable, in proportion to their gross receipts for the fiscal year preceding the making of the assessment, and one-half in proportion to the length of their roads, for any expenses already incurred or hereafter to be incurred, which, in the opinion of the Committee, should be borne by this Association; and each of the companies, members of this Association, does hereby severally agree with the Treasurer of said Association, when said assessment is made, to pay him the sum so assessed upon it, and that said Treasurer may maintain an action in his own name against each of said companies severally for the assessment as aforesaid made upon it.

ARTICLE X.

Any company may withdraw from this Association by giving notice in writing to the Secretary, provided such company shall nevertheless be liable for its proportion of the expenses to the Association for the fiscal year ending December 31st next ensuing.

ARTICLE XI.

This Constitution may be altered or amended by a vote of two-thirds of the members present at any regular or special meeting, provided due notice of said proposed alteration or amendment shall have been given in notice for said meeting.

BY-LAWS.

ADOPTED DECEMBER 4, 1878

ARTICLE I.

The annual meeting of the Association and the election of an Executive Committee shall be held in the City of New York, and the stated meetings of the Executive Committee shall be held on the second Wednesdays of the months of March, May, September and December, in each year, at such place and hour as the Committee may from time to time designate; special meetings of the Executive Committee shall be called in the same manner as provided in the Constitution for the meetings of the Association.

ARTICLE II.

The general office of the Association shall be located, until further action by this Committee, at Boston, Massachusetts.

ARTICLE III.

The Executive Committee shall, at their first meeting after election, organize by electing *from their own number*, a Chairman and a Treasurer, a Secretary, and General Agent, *not members of the Committee*, and also a Finance Committee, to be composed of three members of the Executive Committee. All elective officers shall serve for the ensuing year, or until their successors be elected.

ARTICLE IV.

Five members of the Committee shall constitute a quorum for the transaction of business, which shall be in the following order:

1. Minutes of the last meeting read.
2. Report of Treasurer.
3. List of applications made since last meeting.
4. Report of Secretary.
5. Miscellaneous business.
6. Unfinished business.
7. New business.

ARTICLE V.

SECTION 1. The Finance Committee shall have charge of the finances of the Association, and shall authorize all investments, and annually audit the accounts of the Treasurer.

SEC. 2. The Chairman shall preside at all meetings of the Executive Committee, preserve order and regulate debate, according to parliamentary rules, and appoint all committees, unless otherwise ordered by the Committee. In the absence of the Chairman, a Chairman *pro tem.* may be appointed. The Chairman shall be *ex officio* a member of all committees.

SEC. 3. The Secretary shall have charge of the models, books, papers, and documents of the Executive Committee, and of the Association, excepting those in charge of the Treasurer; and no original paper or report shall be taken from the office without the consent of the Executive Committee; he shall be present at all meetings of the Executive Committee, take minutes of the proceedings, and record the same in a suitable book for that purpose. He shall notify the members of all regular and special meetings at least ten days prior to each meeting, and shall answer all inquiries from members of the Association, relative to patent matters, by furnishing such important information as may be in possession of the Committee; make such examinations and investigations, and collect such information and testimony, as may be necessary for the proper action of the Executive Committee, or for conducting a suit in the interests of

the Association; he shall report at each stated meeting a list of applications submitted since the last meeting, and make such reports thereon as have been prepared, and may send to members, applying therefor, any report that has been prepared for the action of the Executive Committee, but not submitted with the understanding that said report is of no effect unless approved by the said committee. He shall, whenever the necessity for outside counsel may arise, submit to the Executive Committee the names of parties to be engaged, and the rates at which such services may be obtained; but no engagement therefor shall be binding unless approved by the President. He shall prepare and submit to the Executive Committee, at its stated meeting in March of each year, a report of the operations of the Association for the past year; showing the applications made; from whom, and date of report thereon; and also the status of any suits that may be in progress.

He shall, by and with the consent of the Committee, appoint a clerk to perform such duties connected with the Association as he may direct.

SEC. 4. The Treasurer shall keep a regular set of books, containing the accounts of the Association, and of all the funds that may pass through his hands, and keep a separate account as Treasurer at such bank or banks as the Executive Committee may approve. He shall make report, at each stated meeting of the Executive Committee, of his receipts and disbursements, in such form as the said Committee may direct, and at the stated meeting in March shall submit a general statement of the financial condition of the Association, and a detailed statement of receipts and expenditures of the past fiscal year, duly audited by the Finance Committee. All payments shall be made by order on the Treasurer, audited by the Secretary and approved by the President.

SEC. 5. The General Agent shall, under the supervision and direction of the Secretary, investigate and report on all

patent questions, as submitted by members of the Association, and in contested cases shall prepare for defence. He shall note applications for new patents, and the extension of old ones. He shall furnish such information through the Secretary as will enable the Executive Committee to reply to the inquiries of correspondents touching patent matters, and to act intelligently in adjusting patent claims.

ARTICLE VI.

No alterations or amendments shall be made in these By-laws until presented at a stated meeting and adopted at a subsequent meeting by a majority of the whole Committee.

AMENDMENTS TO THE CONSTITUTION AND BY-LAWS OF 1878.

At annual meeting, held May 14, 1879, Article II of the Constitution was amended by adding thereto as follows:

“But no railroad company whose earnings are mainly derived from the transportation of passengers upon an elevated railroad within the limits of a city shall be admitted as a member of the Association except upon such terms and conditions as may be prescribed by the Executive Committee.”

The following amendment to the Constitution was made at meeting held May 9, 1883: To Sec. 1, Article III, was added:

“And in all cases where a member of the Executive Committee is absent from two consecutive stated meetings of said Committee, unless such absence is caused by sickness or absence from the country, it shall be equivalent to a resignation of said member, and it shall be the duty of the Executive Committee to fill the vacancy thus created, at the next stated meeting.”

On May 12, 1880, the office of General Counsel and Secretary was created.

May 14, 1884.

The Constitution was amended so as to provide for a Vice-President of the Association, whose duties were defined. (Mr. Theodore N. Ely was elected to that office.)

May 12, 1886.

Article IX was amended so as to impose loss of membership in case of default in the payment of dues after a given time.

May 11, 1887.

The following amendments were made to the Constitution: To Section 4 of Article III, by striking out the words "their compensation," and inserting the words "salaries and compensation," and prescribing the duties of all officers, agents, and employees.

To Article IV by adding to the end of Section 2 the following words:

"Notice of any meeting of the Association shall be given by written or printed notice, directed to each member and deposited in the post-office at least ten days prior to the day of such meeting."

All of Article V repealed.

Articles VI, VII, VIII, IX, X, and XI renumbered to read, respectively, V, VI, VII, VIII, IX, and X.

Upon the same date the office of General Counsel and Secretary, created by resolution adopted May 12, 1880, was discontinued, and the offices of a General Counsel and a Secretary in accordance to amendments to the By-Laws were created, Mr. Andrew McCallum being elected General Counsel and Mr. John J. Harrower, Secretary.

At this meeting there was a general revision of the Constitution, the special duties of each officer being stricken out and afterwards inserted by the Executive Committee in the By-laws governing that body.

The Constitution as amended at meeting held May 8, 1900, provided for the Treasurer acting as a member of the Executive Committee when such action would insure a quorum,

four members of the Executive Committee and the Treasurer in such event constituting a quorum.

May 11, 1904.

Section 1, Article IV, of the Constitution was amended so as to substitute the second Thursday in May for the second Wednesday as the time when the annual meeting of the Association shall be held.

May 25, 1905.

The following amendments of the By-Laws were adopted :

ARTICLE I. Provision was made for holding the annual meeting at such place as the Executive Committee may, from time to time, designate.

Article III was amended so as to provide for the election of an auditor of the Association, whose duties were defined in a new section to Article V, viz., Section 6.

Section 4, Article V, was amended by defining additional duties to be performed by the Secretary in consequence of the changes made in the methods of accounting, etc.

Section 5, Article V, was amended by defining the duties of the Treasurer so as to conform with changes made in methods of accounting, etc.

CONSTITUTION IN FORCE OCTOBER 25, 1905.

ARTICLE I.

This Association shall be called "THE EASTERN RAILROAD ASSOCIATION." While having for its general purpose the promotion of the railway interests, its leading object shall be the protection of its members against unjust claims made for patented inventions.

ARTICLE II.

This Association shall be composed of railroad companies of New England, and any others, at the discretion of the Executive Committee, subscribing to the articles and contributing to the expenses of the Association; each company to be represented by a duly authorized person; but no railroad company whose earnings are mainly derived from the transportation of passengers upon an elevated railroad within the limits of a city shall be admitted as a member of the Association, except upon such terms and conditions as may be prescribed by the Executive Committee.

ARTICLE III.

SECTION I. The affairs of the Association shall be managed by an Executive Committee of nine members, who shall be elected every year at the annual meeting of the Association. They shall submit at each annual meeting of the Association a report of the operations of the past year and of its financial condition, and any member of said Committee ceasing to be the representative of the company for which he is appointed shall cease to be a member of said Committee; and in all cases where a member of the Executive Committee is absent from *two consecutive stated meetings* of said Committee, unless such absence is caused by sickness or absence from the

country, it shall be equivalent to a resignation of said member, and it shall be the duty of the Executive Committee to fill the vacancy thus created at the next *stated* meeting.

SEC. 2. Said Committee shall organize by the election from its own members of a President and a Vice-President. It shall also elect a General Counsel, a Treasurer, and a Secretary; who shall also be President, Vice-President, General Counsel, Treasurer, and Secretary of the Association. A majority of the committee shall constitute a quorum for the transaction of business; but in the absence of a quorum at any meeting of the Committee, the Treasurer may serve as a member thereof at such meeting, in which case four members of the Committee with the Treasurer shall constitute a quorum. Said Committee shall also appoint such standing Committees as it may deem necessary.

SEC. 3. Said Committee shall provide a suitable place for the general office of the Association, where all models, books, papers, and documents may be deposited for safe-keeping.

SEC. 4. Said Committee shall have power to elect such other officers and employés, and appoint such legal counsel, as may be necessary for the interests of the Association, and fix salaries and compensation, and prescribe the duties of all officers, agents and employés; shall fill vacancies in its membership, and make by-laws for its own government.

SEC. 5. Meetings of the Executive Committee may be called at any time by the President, or shall be when requested by any two members of the Committee.

ARTICLE IV.

SECTION 1. The annual meeting of the Association for the election of the Executive Committee and for the transaction of other business shall be held on the second Thursday in May, at such hour and place as may be designated by the Executive Committee, and the fiscal year of the Association shall terminate on the 31st of December.

SEC. 2. Special meetings of the Association shall be called

by the President upon the request of two members of the Executive Committee, or at the written request of the representatives of not less than five companies. Notice of any meeting of the Association shall be given by a written or printed notice directed to each member, and deposited in the Post Office at least ten days prior to the day of such meeting.

SEC. 3. The representatives of ten companies shall constitute a quorum at all meetings of this Association. Each company shall be entitled to one vote.

ARTICLE V.

SECTION 1. Whenever, in the opinion of the Executive Committee, a patent submitted for examination by any member is valid, or whenever it is deemed inexpedient to contest any claim made upon a member of the Association for the use of a patented invention, it shall be the duty of said Committee, at the request of any of the associate members, to negotiate either for the use of said patent, or for a settlement of the claim preferred, and, when effected, to report the same to each associate member for acceptance.

SEC. 2. If any member declines accepting the basis of settlement so offered (and a failure to acknowledge receipt of said notice for fifteen days after its date shall be deemed an assent to the terms thereof) the Association shall not be responsible for the defence of any suit, or for the expenses of any litigation against that company, and growing out of that case, incurred subsequent to date of said notice.

SEC. 3. Whenever a suit is brought against any member of the Association for infringing upon a patent reported upon as invalid, or whenever a claim is made against any member for the use of a patent reported upon as valid, and for which a basis of settlement has been agreed upon as aforesaid, it shall be the duty of that member to make report of such suit or claim to the Secretary, and thereafter the said Committee shall manage the same at the expense of the Association;

Provided, The member so reporting has not previously declined, or shall not subsequently decline, such basis of settlement as has been, or may be, recommended by the Executive Committee.

SEC. 4. Members of the Association shall not settle any suit or claim against them after being advised by the General Counsel that a similar suit or claim is in charge of the Association for defence in behalf of any of its members without the consent of the General Counsel, endorsed by the President.

SEC. 5. Whenever the Executive Committee shall adopt a report relating to a patent, and shall not deem it for the best interests of the Association to assume or continue the expenses of litigation growing out of such report, it may at its discretion so notify the member to whom such report is made, and the Association shall not thereafter be at any legal or other expense on account thereof; but said Committee may compromise and settle the claim, or purchase a license for such member at the expense of the Association: *Provided*, That in the opinion of said Committee such settlement or purchase can be effected at less expense to the Association than the cost of carrying on the litigation in behalf of such member.

ARTICLE VI.

Any member wilfully violating these Articles may be stricken from the roll of membership by a vote of two-thirds of the members present at any annual or special meeting, provided due notice of such proposed action shall be given in the call of said meeting.

ARTICLE VII.

The President of the Executive Committee shall confer with the officers of similar Railroad Associations in the United States in relation to the settlement of patent claims and the trial of patent cases, and said Committee may, if they

deem it advisable, contribute from the funds of the Association to aid in the defence of any patent case, the issue of which involves the interests of the members of the Association.

ARTICLE VIII.

The Executive Committee shall have the power, and it shall be their duty from time to time, as often as they judge the interests of the Association require, to make assessments upon members of the Association, one-half, as nearly as practicable, in proportion to their gross receipts for the fiscal year preceding the making of the assessment, and one-half in proportion to the length of their roads, for any expenses already incurred or hereafter to be incurred, which, in the opinion of the Committee, should be borne by the Association. If any company shall neglect to make the proper returns called for by the Secretary after assessment is made, or neglect to pay the Treasurer the sum assessed upon it before the 31st day of December thereafter occurring, it shall be deemed to be in default and shall not be entitled to the privileges of membership, and if it shall fail to pay the sum assessed upon it within three months after notice of default from the Treasurer, it shall thereupon cease to be a member of the Association.

ARTICLE IX.

Any company may withdraw from this Association by giving notice in writing to the Secretary, provided such company shall, nevertheless, be liable for its proportion of the expenses of the Association for the fiscal year ending December 31st next ensuing.

ARTICLE X.

This Constitution may be altered or amended by a vote of two-thirds of the members present at any regular or special meeting, provided due notice of said proposed alteration or amendment shall have been given in notice for said meeting.

BY-LAWS

AS AMENDED MAY 25, 1905.

ARTICLE I.

The annual meeting of the Association and the election of an Executive Committee shall be held on the second Thursday in the month of May, and the stated meetings of the Executive Committee shall be held on the second Thursday of the months of March, May, October and December in each year, at such place and hour as the Committee may from time to time designate. Special meetings of the Executive Committee shall be called in the same manner as provided in the Constitution for the meetings of the Association.

ARTICLE II.

The general office of the Association shall be located, until further action by this Committee, at Washington, District of Columbia.

ARTICLE III.

The Executive Committee shall, at its first meeting after election, organize by electing *from its own number*, a President and a Vice-President, and shall also elect a Treasurer, a General Counsel, a Secretary and an Auditor, *not members of the committee*, and also a Finance Committee to be composed of three members of the Executive Committee. All elective officers shall serve for the ensuing year or until their successors are elected.

ARTICLE IV.

The transaction of business shall be in the following order:

1. Reading of the minutes of the last meeting.
2. Report of Treasurer.

3. List of applications for membership made since last meeting.
4. Report of General Counsel.
5. Other business.
6. Reports on patents, &c.

ARTICLE V.

SECTION 1. It shall be the duty of the President or Vice-President to preside at all meetings of the Association. In the absence of the President and Vice-President, a President *pro tem.* may be appointed. The presiding officer shall name or appoint all special committees, unless otherwise ordered by the Association, and the President shall be, *ex officio*, a member of all Committees.

SEC. 2. The Vice-President, when called upon, shall assist the President in the performance of his duties, and during the absence or at the request of the President shall officiate in his place.

SEC. 3. The General Counsel shall give his time exclusively to the service of the Association, and receive therefor such salary as the Executive Committee may fix. He shall make all required examinations and reports as to scope and validity of letters patent and questions of infringement of same, and prepare cases for defence before the courts. He shall answer all inquiries from members of the Association relative to patent matters, and furnish them with written information regarding patents or patent claims that may be in the possession of the Executive Committee; shall have charge of the office, models, archives, and property not pertaining to the investments or finances of the Association; and perform such other duties as the Executive Committee may direct.

SEC. 4. The Secretary shall give his time exclusively to the service of the Association, and receive therefor such salary as the Executive Committee may fix. He shall keep the books of the Association, excepting those in charge of the Treasurer and Auditor; shall prepare for payment all bills

rendered against the Association; shall secure the proper returns for assessments as made by the Executive Committee under Article VIII of the Constitution, and render bills against members in accordance therewith; shall keep the minutes of the meetings of the Association and of the Executive Committee; and shall notify the members and the Executive Committee of all meetings of their respective bodies. He shall have charge of the rooms of the office building in the city of Washington, D. C., not occupied by the Association, rent same, collect the rents, and account to the Treasurer therefor. He shall assist the General Counsel, and perform such duties as may be designated by him, and, in the absence of the General Counsel, he shall take charge of the office, models, archives, and property not belonging to the finances of the Association, and perform such other duties as the Executive Committee may direct.

SEC. 5. The Treasurer shall receive and disburse all the moneys of the Association under the direction of the Executive Committee.

He shall keep a cash book which shall show a complete record of all the funds that pass through his hands, and keep a separate account as Treasurer at such bank or banks as the Executive Committee may approve. He shall make a report at each stated meeting of the Executive Committee and at any other time when called for by the Executive Committee of his receipts and disbursements, in such form as the said Committee may direct, and at the stated meeting in March shall submit a general statement of the financial condition of the Association, and a detailed statement of receipts and expenditures of the past fiscal year, duly audited by the Finance Committee. He shall make no payments except by authority of a voucher approved by the President.

SEC. 6. The Auditor shall keep a set of books showing a record of the assets and liabilities of the Association in such form and containing such detail as may be ordered by the Executive Committee.

ARTICLE VI.

No alteration or amendment shall be made in these By-laws until presented at a stated meeting and adopted at a subsequent meeting by a majority of the whole Committee.

STANDING RESOLUTIONS

TO AND INCLUDING OCTOBER 12, 1905.

“Resolved, That the attention of the members of the Eastern Railroad Association be called to the fact that while the Association is at all times ready, and it is its duty, to render all assistance to its members in matters pertaining to the use of patented inventions, yet the Constitution under which the Association operates forbids it assuming charge of, or of making any appropriation of funds for, any suits against its members unless the invention in question, with the patent therefor, has been examined and reported upon by the Executive Committee; or that in the opinion of the said Committee, the issue involve the interests of the Association generally.

“Resolved, That the Secretary be, and he is hereby, directed to notify any member serving such notice of suit against his company that all expenses incurred by said Secretary for assistance other than what may be had from the records of the Association must be borne by said member, unless said suit, upon examination, may be accepted by the Executive Committee, in which case all expenses will be assumed by the Association.”

Adopted December 4, 1878.

“Resolved, That the Secretary be instructed that in sending reports to members, previous to their being submitted to the Executive Committee, he append thereto a printed notice to the effect that said reports are of no effect or binding upon the Association until approved by the Executive Committee.”

Adopted March 12, 1879.

“Resolved, That the Secretary be instructed to notify all railroad companies, members of this Association, that hereafter all applications from such company asking for information from the Association in regard to any patented device must be made through the President, Vice-President, General Manager, or Superintendent of such company, or such officer or agent of said company as may be thereto specially authorized by resolution of the Board of Directors of said company.”

Adopted March 10, 1880.

“Resolved, That the Executive Committee be authorized to fix upon and establish an entrance fee that shall be chargeable to all companies desiring to connect themselves with the Eastern Railroad Association after this date, said entrance fee being intended to cover the proportional interest in funds in the Association now invested.”

Adopted May 11, 1881.

“Resolved, That it is not thought advisable for the Association to introduce or, as an association, advocate legislation in Congress; but its members should promote any bill that may be offered to amend the patent laws so as to require the patentee or owner of a patent to give notice of any claim for infringement, and to commence suit thereon within a reasonable time after such notice is given.”

Adopted December 14, 1881.

“Resolved, That this Association will, through its General Counsel, furnish to any of its members any information it may be able to give in relation to the legal construction, effect, and bearing of any license or assignment made by the inventor or owner of any patent to one of the members; but inasmuch as such licenses and assignments have been drawn or accepted by the Officers or Counsel of such members without action by or consultation with this Association, the Association cannot properly take charge of or assume the ex-

pense of any litigation growing out of or connected with such licenses or assignments."

Adopted December 15, 1881.

"*Resolved*, That the Secretary notify all persons applying to the Association for the privilege of making oral argument before the Executive Committee relating to patents, that such privilege cannot be granted, but that the Executive Committee will receive and consider any argument in writing that may be presented to it."

"*Resolved*, That the Secretary notify the members when copies of reports on patents are forwarded to them that the information thereby conveyed is confidential, and that the party making the inquiry should not furnish copies or permit the same to be copied by others without first consulting with the General Counsel of the Association."

Adopted December 13, 1883.

"*Resolved*, That in all future patent suits against members of this Association, the Secretary be, and is hereby, instructed to require from the plaintiffs bonds or security for the costs, when such security can be legally demanded."

Adopted March 13, 1884.

In the matter of reports called for by members, respecting inventions for which applications for patents are pending in the Patent Office,

"*Resolved*, That the General Counsel be directed to notify the members making such inquiries, that the Association cannot, consistently with its Constitution and By-laws, give any advice or express any opinion, in regard to any invention for which application for Letters Patent has been made and is pending in the Patent Office."

Adopted May 12, 1886.

"*Resolved*, That the office of General Counsel and Secretary, created by resolution adopted May 12, 1880, be discon-

tinued, and that the offices of a General Counsel and a Secretary be created in accordance with amendments to By-laws."

Adopted May 11, 1887.

"*Resolved*, That from and after this date new members may be admitted to this Association without paying initiation fees upon their delivering to the Association their written waiver of any and all claims to the surplus funds which may have accumulated prior to their admission as members, and which may be divided among the present members in the event of the dissolution of the Association."

Adopted May 12, 1897.

"*Resolved*, That the Secretary shall hereafter, when sending to the members the Circular usual after each meeting of the Executive Committee (or at any time when the subject may be of sufficient importance) inform them of any new suits relating to patents which may appear to be of general interest to the members of the Association, whether said suits are brought against such members or against other parties."

Adopted December 8, 1898.

"*Resolved*, That the benefit of the Association be extended to all devices used upon or in connection with transportation lines of members of the Association or corporations controlled by them: Provided, that the earnings and mileage of such transportation lines are reported for assessment, the mileage of regular water routes being reckoned on the basis of one-half the equivalent rail mileage."

Adopted October 12, 1905.

Total mileage in 1868- 7.332 miles
" " " 1905- 44.684 "

PRESS OF GIBSON BROS.,
WASHINGTON, D. C.

Eastern Railroad Association.

OFFICE OF THE PRESIDENT,
Broad Street Station,

PHILADELPHIA, PA., *January, 1906.*

DEAR SIR:

Under separate cover has been sent you a copy of "The History of the Eastern Railroad Association," prepared by the Secretary, Mr. John J. Harrower.

I take this occasion to call the attention of the members to the fact that Mr. Harrower has been in the service of the Association since its inception, now thirty-eight years. It is his familiarity with the affairs of the Association, coupled with his devotion to the task, that has made possible the publication of this valuable and interesting History of the Association.

As a general distribution of the book is not desirable, only one copy is sent to each member of the Association; should additional copies be desired they may be obtained from the Secretary.

Yours truly,

President.

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